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10/554,054

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Tetsu Umeda

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SUGHRUE MION, PLLC  
2100 PENNSYLVANIA AVENUE, N.W.  
SUITE 800  
WASHINGTON, DC 20037

EXAMINER

FIORITO, JAMES

ART UNIT

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1793

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Saegusa US 5846505.

Saegusa teaches a method of making perovskite barium titanate (Example 1). One of the most important characteristics of Saegusa is that iodine gas and/or hydrogen iodide gas are/is selected as an atmosphere gas in which the raw material powder is calcined (Column 6 Lines 5-10). Chlorine or hydrogen chloride may also be used as the atmospheric gas (Column 6 Lines 14-19).

The calcinations temperature depends on the kind of intended double metal made in the process, the concentration of iodine or hydrogen iodide in the atmosphere

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gas, or a calcinations time, and is not limited. Preferably from 500 degrees C to 1500 degrees C, more preferably 600 degrees C to 1400 degrees C, in particular 800 degrees C to 1200 degrees C (Column 7 Lines 40-45).

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saegusa US 5846505.

Saegusa does not expressly state all the limitations of claim 1, however where the claimed and prior art product(s) are identical or substantially identical, or are produced by identical or substantially identical process(es) the burden of proof is on applicant to establish that the prior art product(s) do not necessarily or inherently possess the characteristics of the instantly claimed product(s), see *In re Best*, 195 USPQ 430.

Claims 6-16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Uchida US 2002/0064499.

Uchida teaches a method of making perovskite barium titanate (Paragraph 24). Uchida teaches that a hydrogen halide may be used as an atmospheric gas (Paragraph 20), during a calcination step. Calcination occurs at 500 degrees C to 1000 degrees C (Claim 7).

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uchida US 2002/0064499.

Uchida does not expressly state all the limitations of claim 1, however where the claimed and prior art product(s) are identical or substantially identical, or are produced by identical or substantially identical process(es) the burden of proof is on applicant to establish that the prior art product(s) do not necessarily or inherently possess the characteristics of the instantly claimed product(s), see *In re Best*, 195 USPQ 430.

### ***Response to Arguments***

Applicant's arguments filed 4/18/2008 have been fully considered but they are not persuasive.

Applicant argues Saegusa does not teach the instant product because the use of chlorine or hydrogen chloride makes it difficult to produce the desired product. However, Saegusa merely teaches that it is difficult to obtain the product using chlorine or hydrogen chloride not that it is impossible. Therefore, Saegusa anticipates the instant product regardless of the difficulty associated with obtaining it.

Applicant argues Uchida does not teach the step of calcining the obtained mixture under an atmosphere containing substantially no halogen. However, Uchida teaches in claim 2 that the concentration of hydrogen halide gas may be about 0.1 vol %, which could be considered to be substantially no halogen.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Fiorito whose telephone number is (571)272-7426. The examiner can normally be reached on 9am - 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on (571) 272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James A Fiorito/  
Examiner, Art Unit 1793

/Wayne Langel/  
Primary Examiner, Art Unit 1793

<b>Application Number</b> 	<b>Application/Control No.</b>	<b>Applicant(s)/Patent under Reexamination</b>	
	10/554,054	UMEDA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JAMES A. FIORITO	1793	